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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-626

ALASKA HELICOPTERS, INC., *Petitioner,*

v.

LESTER M. ANDERSON, *Respondent.*

GENERAL ELECTRIC COMPANY, *Petitioner,*

v.

STATE OF ALASKA, MILLICENT JENNINGS as Administratrix of the Estates of STEVE GANUELAS AND VICTORIA A. VELASCO, TED OREIRO, ARTURO QUEBRAL, SIMEON TINAGEN and NAKAT PACKING COMPANY, *Respondents.*

REPLY TO RESPONDENT ANDERSON'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REPLY TO OPPOSITION

This reply is necessary to correct an erroneous characterization of Petitioner's position. A judge has wide discretion to impose sanctions, or reopen a case under

Federal or Alaska Rule of Civil Procedure 60(b), but this discretion is not unlimited. Petitioners do not contend that the court abused its existing discretion by reopening these cases. Rather, Petitioners contend that the court does not have the discretion to reopen cases solely because of attorney misconduct, and that the *Link* case specifically sets this limit as a matter of due process of law.

Respondent has cited *Citizen's Bldg. and Loan Assn. of Montgomery Co.* v. *Shepard,* 289 A.2d 620 (D.C. Cir. 1972), in support of his position. It appears from the opinion that this case may have been decided without reference to *Link.* More importantly, however, this case, and others in the subject area of attorneys who fail their clients, do provide excellent examples of the maxim, "Hard cases make bad law." *Citizen's Bldg. and Loan* had its dissenter, Chief Judge Hood, in a 2-1 decision, and dissents in other cases in this subject area are also common. This further disagreement supports the contention that this petition for a writ of certiorari should be granted.

Respondent is incorrect in stating that the courts examined the issue of prejudice to Petitioners and found it to be negligible. Respondents so contended in opposition to Petitioners' contention that the loss of certain witnesses, physical evidence, and an indemnity cause of action were substantial. But as all the orders and decisions show, the focus of the courts' consideration was upon plaintiffs' loss of their causes of action, and the actual prejudice to Petitioners was never discussed or ruled upon. This is actually irrelevant, however, for the prejudice to a diligent litigant in this situation is inherent.

A major goal of most lawyers and judges is the maintenance of high standards in the administration of justice. Occasionally, however, attorneys fail their clients. The results of this failure should properly be placed upon the client who freely selected his defaulting attorney, and not upon the diligent litigant as was done to Petitioners by the Alaska courts. This is even more true today than when *Link* was decided. The client of the defaulting attorney is more adequately protected because legal malpractice actions are more readily available and lawyers' professional liability insurance almost universal. The diligent adverse parties have only the remedies of judicial sanctions leading to default or dismissal, and their cases evaporate as time goes by without work on the case in reliance on an order of dismissal finally entered because of the opposing parties' failure to cooperate in the prosecution of the case. If the cases are then reopened, the diligent parties have substantially weaker cases—an actual reward to the defaulting parties. As this happens time after time, the diligent litigant and attorney lose their respect for the courts and the rules; the lazy, incompetent, or disorganized attorney need not improve; and the administration of justice suffers tragically.

CONCLUSION

Petitioner contends that the *Link* case sets standards of "due process"; Respondent denies this. Petitioner further contends that a judgment of dismissal entered because of attorney misconduct cannot be set aside because of that misconduct—and especially by the same attorney as was done in *General Electric Company*. All information necessary to decision is now before this Court. If this Court disagrees with

Petitioner, or discretionarily elects not to hear this case, the petition should of course be denied. If, however, this Court agrees that the *Link* case sets a standard for our system of representative litigation applicable to state and federal courts, and that this standard has been violated by the reopening of these cases solely because of attorney misconduct, then certiorari should be granted and the possibility of a summary reversal in both cases considered to conserve judicial resources.

Respectfully submitted,

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